CIVIL SERVICE COMMISSION MINUTES

June 7, 2006

A regular meeting of the Civil Service Commission was held at $2:30~\mathrm{p.m.}$ in the 6^{th} Floor Tower of the County Administration Building, $1600~\mathrm{Pacific}$ Highway, San Diego, California.

Present were:

A.Y. Casillas
Barry I. Newman
Francesca Krauel
W. Dale Bailey
Cheryl Fisher

Absent was:

None

Comprising a quorum of the Commission

Support Staff Present:

Patt Zamary, Executive Officer William Smith, Senior Deputy County Counsel Selinda Hurtado-Miller, Reporting

Approved Civil Service Commission

July 5, 2006

COUNTY OF SAN DIEGO CIVIL SERVICE COMMISSION MINUTES June 7, 2006

1:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: 6th Floor Tower, 1600 Pacific Highway, San Diego, California

<u>Discussion Items</u> 4,5,6,7,8,9,10

Continued

Referred

Withdrawn

COMMENTS: Motion by Bailey to approve all items not held for discussion; seconded by Fisher. Carried.

CLOSED SESSION AGENDA

County Administration Center, Room 400B
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this
location to hear the announcement of the
closed session agenda.

- A. Commissioner Bailey: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Macario Buenviaje, Human Services Specialist, appealing an Order of Suspension and Charges from the Health and Human Services Agency.
- B. Commissioner Newman: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Donna Clark-Richardson, SEIU Local 2028, on behalf of Mark Humphrey, former Animal Control Officer, appealing an Order of Termination and Charges from the Department of Animal Services.
- C. Commissioner Bailey: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Dennis J. Hayes, Esq., on behalf of **Michael Duncan**, Deputy Alternate Public Defender III, appealing a Final Order of Suspension and Charges from the Department of the Alternate Public Defender.
- D. Commissioner Casillas: CONSIDERATION OF PUBLIC EMPLOYEE DISCIPLINE (GOV. CODE SEC. 54957(b)) Laurel Ward Woolf, Esq., on behalf of Mary Kay Gagliardo,

former Supervising Animal Control Officer, appealing an Order of Termination and Charges from the Department of Animal Services.

E. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Subdivision (a) of Government Code Section 54956.9) William B. Kolender v. Civil Service Commission, Superior Court Case No.: GIC863169

OPEN SESSION AGENDA County Administration Center, 6th Floor Tower

MINUTES

1. Approval of the Minutes of the regular meeting of May 3, 2006.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Newman: Robert W. Krause, Esq., on behalf of **Steven J. Bellizzi**, former District Attorney Investigator IV, appealing a Final Order of Dismissal and Removal from County Employment and Charges from the Office of the District Attorney.

Confirmed.

3. Commissioner Bailey: Joel C. Golden, Esq., on behalf of **Stacie Neldaughter**, former Deputy Public Administrator-Guardian, appealing a Final Order of Termination and Charges from the Health and Human Services Agency.

Confirmed.

DISCIPLINES

Findings

4. Commissioner Bailey: **Macario Buenviaje**, Human Services Specialist, appealing an Order of Suspension and Charges from the Health and Human Services Agency.

FINDINGS & RECOMMENDATIONS:

Appellant Macario Buenviaje is a Human Services Specialist in the Health and Human Services Agency. The Agency suspended him for sixty work days for inappropriate conduct of a sexual harassment nature. He had received previous counseling and discipline for similar conduct. He had also received sexual harassment training twice since his hiring in 2000. At the Commission hearing on Appellant's appeal, the Agency proved most of the charges in the Order of Suspension. The level of discipline was not excessive given Employee's prior training and discipline. Employee's defensive and aggressive response to the charges also gave rise for concern, and the Agency may wish to order a fitness for duty evaluation for Employee.

Employee is guilty of Cause I, conduct unbecoming an officer or employee of the County; Cause II, discourteous treatment of other employees; Cause III, failure of good behavior; and Cause IV, acts which are incompatible or inimical to public service. It is therefore recommended that the Order of Suspension be affirmed; that the Commission approve and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas. Carried.

5. Commissioner Newman: Donna Clark-Richardson, SEIU Local 2028, on behalf of **Mark Humphrey**, former Animal Control Officer, appealing an Order of Termination and Charges from the Department of Animal Services.

FINDINGS & RECOMMENDATIONS:

Appellant Mark Humphrey was an Animal Control Officer in the County's Department of Animal Services. The Department policy and procedure prohibits employees from adopting animals whose owners have relinquished them to the Shelter until one day after the public has had an opportunity to adopt such animals. At the Commission hearing, Employee admitted he removed an English Bulldog puppy from the Central County Animal Shelter property and placed it at a County contracted animal hospital. He placed it there for routine treatment. He also admitted he fabricated a story alleging that he purchased the Bulldog from a private party. He asserted the false story both verbally and in writing. He admitted he wanted to prevent the public from having an opportunity to adopt the Bulldog before he could. He did this because the Bulldog was valuable and would be quickly adopted by a member of the public. He denied having any monetary motivation. He did not disclose his dishonesty until after he was placed on administrative leave pending investigation of his conduct. Although he has a long and

good record of employment, his position involves field work and testimony in court. Therefore, trust and integrity are of utmost importance. Employee is guilty of Cause I, Dishonesty; Cause II, Conduct Unbecoming an Officer or Employee of the County; Cause III, Failure of Good Behavior; and Cause IV, Acts that are incompatible with or inimical to the public service. It is therefore recommended that the Order of Termination be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Bailey. Carried.

6. Commissioner Bailey: Dennis J. Hayes, Esq., on behalf of **Michael Duncan**, Deputy Alternate Public Defender III, appealing a Final Order of Suspension and Charges from the Department of the Alternate Public Defender.

Prior to the reading of the findings and recommendations, Commissioner Krauel explained her non-participation in this item:

"I want the record to reflect that I am not participating in this matter because my husband has worked with many of the witnesses, possibly even the employee. By not participating, I did not attend the Closed Session where this matter was discussed; I have not discussed it with my fellow Commissioners nor staff or consultants, and I have not discussed this matter or communicated with anyone either verbally, in writing, an e-mail, or in any other way, and I will not be voting on this matter."

FINDINGS & RECOMMENDATIONS:

Appellant Michael Duncan was a Deputy Alternate Public Defender IV in the County's Office of Alternate Public Defender. He was terminated on charges of incompetency and inefficiency. The Appellant appealed the termination by denying the charges and alleging the Department discriminated against him on the basis of a physical The disability related to his illness, Nondisability. Hodgkin's Lymphoma, and its medical treatment, consisting primarily of chemo-therapy. Appellant not only appealed the termination under Rule VII of the Civil Service Rules, but complained of discrimination under Rule VI. At a preliminary hearing held on February 27, 2006, Appellant decided to have the Rule VI complaint heard as a defense within the Rule VII appeal instead of proceeding with a

separate Rule VI complaint. At the Commission hearing, the Department failed to present substantial or competent evidence in support of its charges. The Department's evidence lacked sufficient specificity, details, or percipient witness observations. It was comprised primarily of general impressions and hearsay, which was contradicted by Appellant's evidence.

The Department also failed to show significant progressive discipline. There was no prior formal discipline and only intermittent verbal counseling. Even though the alleged Causes for Termination are Incompetency and Inefficiency, there was never any Performance Improvement Plan instituted. Much of the Department's evidence was presented to contradict its own Performance Appraisal Reports for Appellant in prior years, which contained overall "Standard" ratings and primarily positive comments and several "Above Standard" ratings in individual categories. To the extent that the Department was not estopped from contradicting its own Performance Appraisals, the quality of its evidence, comprised primarily of hearsay, failed to rebut the formal documentation of his performance. Accordingly, any notice to Appellant of performance issues was insufficient to support termination or even suspension.

Even had the Department established some level of inadequate performance by Appellant, an affirmative defense thereto is discrimination by the Department. The Department knew or should have known that Appellant was suffering from disabilities related to his medical condition. Appellant asked for accommodation. While the Department may have provided some casual and sporadic accommodations, it failed to timely proceed in the manner prescribed by law. Employee is not guilty of Cause I, Incompetency; and Cause II, Inefficiency. Accordingly, it is hereby recommended that the suspension be reversed and that the Department enter into a good faith interactive process with Appellant; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Bailey to approve Findings and Recommendations; seconded by Casillas.

Commissioner Newman explained that he will be supporting the motion based upon his belief that the Department did not meet the burden of proof.

Carried.

AYES: Newman, Bailey, Fisher, Casillas

NOES: None
ABSTENTIONS: None
ABSENT: None

NOT PARTICIPATING: Krauel

7. Commissioner Casillas: Laurel Ward Woolf, Esq., on behalf of Mary Kay Gagliardo, former Supervising Animal Control Officer, appealing an Order of Termination and Charges from the Department of Animal Services.

Laurel Ward Woolf, Esq. requested to be heard prior to the reading of the Findings and Recommendations. She stated that her client has given 18 years of her life to the dedication of countless animals and the charges are very uncharacteristic of past behavior, and most regrettable. Ms. Woolf explained that Ms. Gagliardo's behavior was merely a lapse in judgment.

FINDINGS & RECOMMENDATIONS:

Appellant Mary Kay Gagliardo was a Supervising Animal Control Officer in the County's Department of Animal Services. She admitted that she asked a subordinate employee to assist her in a scheme to deceive her Director into believing that she was at her desk so that he would not learn that she was late for work. After some revisions, the scheme evolved such that the subordinate employee relayed Appellant's call from her own cell phone through Appellant's office phone to the Director's voice mail. This was done to make it appear as though Employee had called from her office, in compliance with the Director's order that she call each day when she arrived due to excessive unexcused tardiness. Appellant continued the deception even when confronted with the Department's suspicions at a meeting after she was placed on administrative leave. Her misconduct supersedes her long dedication to the Department's mission of saving animals, and her very legitimate issues which may have significantly contributed to her punctuality problems. Trust and integrity are of utmost importance in her position as a supervisor. Department proved all charges except a secondary and relatively minor charge relating to disclosure of the identity of a reporting party during a service call. Employee is guilty of Cause I and Cause II(A). Employee is not guilty of Cause II(B), Cause III (to the extent of the charges under Cause II(A)), Cause IV (to the extent of the charges under Cause I), and Cause V, (to the extent of the

charges under Causes I and II(A)). It is therefore recommended that the Order of Termination be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Bailey. Carried.

DISCRIMINATION

Findings

8. Commissioner Krauel: **Linda Shull**, Social Worker I, alleging age discrimination by the Health and Human Services Agency.

FINDINGS & RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on April 5, 2006, the Commission appointed Francesca Krauel to investigate the complaint submitted by Linda Shull, which alleged age discrimination by the Health and Human Services The matter was concurrently referred to the Office of Internal Affairs (OIA) for investigation. Investigating Officer has taken into consideration all documentation. The report of OIA has been received and reviewed by the undersigned Investigating Officer who concurs with OIA's Report and has concluded that: The evidence does not support a finding of probable cause that a violation of discrimination laws occurred. therefore recommended that Ms. Shull's Rule VI discrimination complaint be denied; that the Commission approve and file this report with the appended OIA Final Investigative Report with a finding of no probable cause to believe that the Complainant has been unlawfully discriminated against; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Krauel to approve findings and recommendations; seconded by Bailey. Carried.

SELECTION PROCESS

Appeals

9. **DeRondi Alexander**, Human Services Specialist, Health and Human Services Agency, appealing the Department of Human Resources' administration of the recruitment process and the

scoring of his application for the classification of Supervising Human Services Specialist.

RECOMMENDATION: Deny Request.

Mr. Alexander addressed the Commission, explaining that he feels an application should support an examination, not take the place of one. When asked by the Commission regarding the timeliness of his appeal, Mr. Alexander stated that he did not know the results of DHR's scoring until several months had passed.

Janice Horning, Human Services Manager, DHR, explained that this type of "examination" process has been utilized by the Department for many years. In this particular case, a review of the candidates was taken under consideration for promotional purposes.

Commissioner Krauel advised that DHR should clarify its selection processes to avoid confusion on the part of applicants.

Motion by Casillas to approve Staff Recommendation; seconded by Krauel. Carried.

10. Donna Clark-Richardson, SEIU Local 2028, on behalf of **Tami L. Walters**, Intermediate Clerk, appealing the Department of Human Resources' determination that she is ineligible to compete in the selection process for the classification of Latent Print Examiner.

RECOMMENDATION: Deny Request.

Ms. Walters distributed a packet to the Commission which contained letters from trainers and documented training. She explained she has met the 4-year experience requirement by volunteering. Further, she said that Greg Thompson, Director of Forensic Services has requested DHR to accept Appellant's application as meeting the 4-year requirement.

Marty Fink, a Supervising Criminalist at the Crime Lab, with 15 years serving as a subject matter expert on a number of classifications reviewed Ms. Walters credentials, and he stated that he would have accepted her application as meeting the minimum qualifications.

Donna Clark-Richardson, SEIU Local 2028, opined that Ms. Walters' volunteer training meets the 4-year experience requirement.

Anne Calle, representing DHR, explained that Ms. Walters' current classification is Intermediate Clerk and that classification does not qualify for the Latent Print Examiner classification. Both Ms. Calle and several Commissioners encouraged Ms. Walters to take the avenues available to her in order to reach the minimum requirements of Latent Print Examiner. Commissioner Newman reminded the Commission that several years ago, DHR determined job specifications tied to classifications would be reviewed in order to ascertain minimum qualifications. Ms. Calle added that since subject expert Marty Fink believes that Ms. Walters was working out of her class, then perhaps a remedy could be reached via Civil Service Rule XII, wherein a classification study could ensue.

Motion by Krauel to approve staff recommendation; seconded by Casillas. Carried.

Findings

11. **Guadalupe Mendoza**, appealing the Department of Human Resources' removal of her name from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 11 Ratified.

OTHER MATTERS

Extension of Temporary Appointments

- 12. Office of County Counsel
 - 1 Confidential Paralegal (Silvia Huerta)
- 13. Health and Human Services Agency
 - 4 Residential Care Worker Trainees (Summer Evans, Consue Henderson, Lina Donnelson, Jennifer LaBlanc)
 - 1 Residential Care Worker I (Thomas Brigham)

RECOMMENDATION: Ratify Item Nos. 12-13.

Item Nos. 12-13 ratified.

14. Public Input.

ADJOURNED: 4:00 p.m.

NEXT REGULAR MEETING OF THE CIVIL SERVICE COMMISSION: JULY 5, 2006